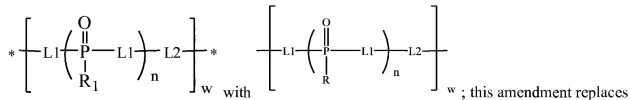


### REMARKS

Claims 35-48 are pending in the application. Claim 35 has been amended to replace



R1 on the phosphorus atom with R and removes the “\*”. Support for the claim amendment can be found throughout the application, such as on page 2, paragraph [0007]. Claim 48 has been canceled. Claim 49 is new. Support for claim 49 can be found throughout the application, such as on page 27, paragraph [00120]. No new matter has been added.

Favorable consideration is respectfully requested in view of the foregoing amendment and following remarks.

### CLAIM REJECTIONS BASED ON 35 U.S.C. § 112 ¶1

Claim 48 stands rejected under 35 U.S.C. § 112 ¶1 based on the Examiner’s contention that the claim does not reasonably provide enablement for treating cancer. Solely to expedite prosecution, claim 48 has been canceled. Importantly, the Applicants expressly reserve the right to further prosecute the same or similar claims in subsequent patent applications claiming the benefit of priority to the instant application. 35 U.S.C. § 120; and 35 U.S.C. § 121.

### CLAIM REJECTIONS BASED ON 35 U.S.C. § 102(b)

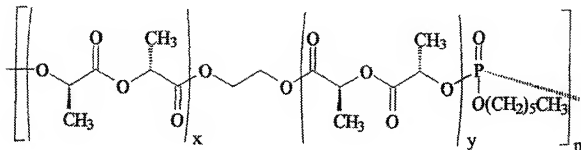
*WO 02/04544 to Barnette et al.*

Claims 35-48 stand rejected under 35 U.S.C. § 102(b) based on the Examiner’s contention that the claims are anticipated by WO 02/04544 to Barnette et al. The Applicants respectfully traverse.

The Applicants respectfully remind the Examiner that in order to anticipate a claim, a single source must contain all of the elements of the claim. See *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1379, 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986); *Atlas Powder Co.*

v. E.I. duPont De Nemours & Co., 750 F.2d 1569, 1574, 224 U.S.P.Q. 409, 411 (Fed. Cir. 1984); In re Marshall, 578 F.2d 301, 304, 198 U.S.P.Q. 344, 346 (C.C.P.A. 1978). Missing elements may not be supplied by the knowledge of one skilled in the art or the disclosure of another reference. See Structural Rubber Prods. Co. v. Park Rubber Co., 749 F.2d 707, 716, 223 U.S.P.Q. 1264, 1271 (Fed. Cir. 1984).

The Examiner cites the following polymer from Barnette:



If one was to use the terminology of claim 35 to describe the polymer shown above, the R would be OR<sub>1</sub>; R<sub>1</sub> would be alkyl (ethyl); L<sub>1</sub> would be a polylactide structure represented by -OCH(CH<sub>3</sub>)C(O)OCH(CH<sub>3</sub>)C(O)-; and L<sub>2</sub> would be -OCH<sub>2</sub>CH<sub>2</sub>O-. Therefore, the polymer shown above does not meet all of the claim limitations of claim 35 because L<sub>2</sub> is not a chemical moiety comprising a -C(O)- radical at each of its termini (such as -C(O)C<sub>6</sub>H<sub>4</sub>C(O)-; see, for example, claims 38 and 49). Therefore, because WO 02/04544 to Barnette et al. does not teach all the limitations of the claims, the Applicants respectfully request the Examiner withdraw the claim rejections under on 35 U.S.C. § 102(b) based on WO 02/04544 to Barnette et al.

#### REJECTIONS BASED ON OBVIOUSNESS-TYPE DOUBLE PATENTING

Claims 35-45 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 6-11, 13-19, 21-25, 33, 35-38, 43, 47, 66, 70 and 73 of U.S. Patent No. 6,455,665 to Barnette et al. ("the '665 patent"). The Examiner asserts that the '665 claims claim a method of preparing the compositions of claims 35-45.

Claims 35-45 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 6-11, 13-19, 21-25, 33, 35-38, 43, 47, 66,

70 and 73 of U.S. Patent No. 6,455,665 to Barnette et al. ("the '665 patent"). Therefore, to expedite prosecution to allowance of the pending claims, the Applicants submit herewith a Terminal Disclaimer, corresponding to the patent cited by the Examiner, that complies with the requirements of 37 CFR 1.321(c). The Disclaimer is accompanied by the required fee. 37 CFR 1.321(c). Accordingly, withdrawal of the rejections under the judicially-created doctrine of obviousness-type double patenting is respectfully requested.

### FEES

The Applicants believe that the fees required in connection with the filing of this Response have been provided. Nevertheless, the Commissioner is hereby authorized to charge any additional fees due in connection with the filing of this Response to our Deposit Account, No. **06-1448**, Reference **GPT-032.01**.

### CONCLUSION

The Applicants believe that the pending claims are in condition for allowance. If a telephone conversation with Applicants' Agent would expedite prosecution of the above-identified application, the Examiner is urged to contact the undersigned.

Respectfully submitted,  
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